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MILWAUKIE '88!

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 1, 1988**

The one thousand five hundred and forty-seventh meeting of the Milwaukie City Council was called to order at 7:07 p.m. at Campbell Elementary School with the following Councilors present:

Roger Hall,
Mayor
Craig Lomnicki

William Fitzgerald
Chere' Sandusky
Mike Richmond

Also present:

Hugh H. Brown,
City Manager
Greg Eades,
City Attorney
Sandra Miller,
Assistant to the
City Manager
Jerri Widner,
Finance Director

Bill Adams,
Community Development Director
Dave Krogh,
Assistant Planner
Paul Roeger,
Acting Public Works Director
Pat DuVal,
Executive Secretary

AUDIENCE PARTICIPATION

Christine Clemmons representing the Clackamas County Coalition for Prevention of Child Abuse told Council of the organization's commitment to children. She said the group's goals were to inform schools, families, and children of abuse problems, to coordinate advocacy group activities, and to improve the system's response to neglect and child abuse. **Carol Strantz** vice-president of the group told Council of their plans to distribute coloring books and book marks to help educate the public. **Sue Trotter** read a proclamation naming April Child Abuse Prevention Month and asking support from Council. Council concurred to support the concept and to discuss policy regarding requests for financial assistance.

Betty Roholt presented a follow up report to the February 27 City Party. She expressed appreciation to those who donated time, money, and food for the event. Ms. Roholt said unused food was given to the Clackamas Women's Services, a home for battered women and their children, and she urged citizens further support this group and the Annie Ross House by donating to an ongoing coffee fund.

Mayor Hall read several commendation letters to the Police Department regarding officers' service to residents of Milwaukie. He then read a letter from members of the department expressing their gratitude to Chief Goodpaster for his professionalism, leadership and competence in difficult situations of the past few weeks.

Jim Backenstos urged Council's support of the child abuse prevention program and suggested Council write to state and county government representatives.

He stated that he was again misquoted in the minutes of the previous Council meeting regarding Chief Bailey's budget. Mr. Backenstos said the Chief should not be getting any more "little red wagons." He then accepted from Councilmember Sandusky the information offered at the previous meeting regarding the 1987 goals and the actual accomplishments. Mr. Backenstos then asked Mayor Hall to name specifically the budget priorities. Mayor Hall and Councilmembers listed the priorities, and Mr. Backenstos said he was glad Police and Fire were at the top of the list. He then asked if City Attorney Eades was representing the City in its many pending lawsuits, and Eades replied he was except those being handled by the insurance carrier. City Manager Brown stated the reference to "many" lawsuits was grossly inaccurate.

OTHER BUSINESS

Council concurred to consider this portion of the agenda prior to the continuation of the Public Hearing.

Approval of March 1988 Bid List - Finance Director Jerri Widner told Council the bid list item for the month was carpeting in the old section to replace that which was becoming worn and potentially dangerous and recommended approval. It was moved by Councilmember Sandusky and seconded by Councilmember Fitzgerald to approve the bid list for March 1988. The motion passed 5 - 0.

Acceptance of Police Arbitration - City Attorney Eades explained the features of the arbitrator's award on the 1988-89 contract with MPEA saying, although the wage award was higher than the City's proposal, the decision was generally favorable. Mayor Hall clarified to the audience the arbitration was binding on the City. It was moved by Councilmember Sandusky and seconded by Councilmember Richmond to accept the arbitrator's award and authorize the Mayor and City Manager to execute the contract. Motion passed 5 - 0.

PUBLIC HEARING

Appeals of Kellogg Lake Planning Commission Decisions - Continuation (Files AP-CU-88-01/02 and AP-PR-88-03). The public hearing was opened at 7:48 p.m. Community Development Director Bill Adams presented addition staff comment regarding written statements from the February 16 meeting. He said further analysis of the geologic/soils conditions would be done as part of the Environmental Protection Ordinance and Uniform Building Code Review, but they would not be necessary to make a decision on the application. Mr. Adams also stated although the natural resources inventory program was in process, the City's acknowledged Comp Plan has applicable environmental protection measures. Adams also stated the objection raised because of the 1978 rejection of a proposed apartment complex on that site was not relevant to this application because it occurred prior to the Comp Plan and Zoning Ordinance adopted in 1979. He then stated the concerns with setbacks and riparian vegetation would be addressed in the building permit process and compliance would be verified as part of the Environmental Protection review. Adams stated the County has granted preliminary design review approval for the proposed 160 units outside of the City limits.

Councilmember Sandusky announced at this time that she had been contacted by a member of the Oak Lodge Fire District to discuss a matter not related to the appeal, but she had declined discussion until this public hearing was completed.

Maury Paine, ODOT, told Council that conceptual plans for intersection improvements had been approved with certain details to be addressed. **Mayor Hall** asked what these details were. Paine replied the traffic plan had been approved and details included such items as drainage and lane width. Mayor Hall asked if ODOT could foresee any detrimental effects, and Paine replied they did not. **Councilmember Lonnicki** asked if not having a signal was acceptable, and Paine replied yes. **Councilmember Richmond** asked if there were a similarity to the development just to the south on McLoughlin. Paine replied his department was involved with issuing permits, and the situation was quite similar. Mayor Hall asked the procedure followed by a developer with ODOT. Paine replied any developer who might generate significant traffic was required to hire a professional consultant, and if plans were acceptable, ODOT would approve them conceptually.

Testimony in Opposition.

Bob Shoemaker, Attorney for Appellant Kellogg Lake Friends, presented a petition with an additional 350 signatures against the proposed development. He also presented written reports by Fishman and Sharp. From the Fishman report, Shoemaker related the Conditional Use permit was not in compliance with statewide Goal #5 and violated the intent of the Willamette Greenway Element. The Fishman report also stated the wetland resources of the city were not being adequately protected. Shoemaker urged the approval be withheld until environmental determinations are made by Council, not by city staff. Shoemaker reported that Dudley Nelson had spoken to Carl Vistica at the State Highway Department and was told the section of the highway from the Milwaukie city limits south to Courtney showed an increasing rate of traffic accidents from 1982 to the present. Shoemaker urged Council to perform its own field test and get a sense of the traffic safety impact this development would have.

Gene Lambird, 12415 NW Haskell Ct., and owner of the property at 12006 SE McLoughlin, introduced himself as the founder of the Friends of Kellogg Lake. He reviewed the findings of the 1978 decision regarding development on the lake and cited the reasons for rejection as being the floodplain, traffic and regard for the City's plans for open space. Mr. Lambird stated a traffic change of this magnitude was too serious.

Al Jaeger, 12350 SE 31st Pl., spoke regarding the presentation by Ed Sullivan at the previous meeting. He said all buildings were within the 100-year floodplain, and the density of the development would destroy the most significant wildlife area in the City. The development would be an eyesore to people on the north side of the lake, and noise levels would increase substantially because of an increased population and natural sound barriers between the highway and the lake would disappear. Mr. Jaeger said the developer would never get permits for the walking path he said would be provided. He also stated it was impossible to access McLoughlin from the site

because of heavy traffic. He said traffic was already going 50-60 mph, and any volume increase would result in injuries and death.

Mike Clain, 12521 Northview, spoke about the quality of life issue in the proposed development and the need for a natural setting in an urban environment.

Bob Shoemaker referred to the Sharp report in which Houck and Lev stated the area was a significant Coal 5 resource particularly because urban natural areas are limited in Milwaukie. He said Ms. Sharp had found the wildlife habitat rating of the site would drop by half if the development were completed.

At this time **Councilmember Sandusky** clarified her statement regarding contact with the Oak Lodge Fire District as being with board member Glen Parker.

Other Testimony in Opposition.

Jack McDougall, 2702 Lakewood Pl., said the Forest Creek Apartments contained only 35 units. He said he and the Millers did not wish to be a part of the destruction of a wildlife habitat. He recounted the effects of the Christmas 1964 flood. Mr. McDougall submitted a report regarding the number of traffic accidents occurring on the Milwaukie to Gladstone corridor, and he stated the average daily traffic count between Jefferson and Sparrow was 35,845.

Kurt Bonningen, 2416 SE Lake Rd., Elder of Milwaukie Presbyterian Church, said local policy makers are faced with incomplete information, and this development surpasses the caring capacity to natural resources as cited in state guidelines. He said the traffic safety issues are a definite problem. Mr. Bonningen stated that although his church supports economic development, this development does not express adequate concern with quality of life. He urged Council to assume a role of stewardship and consider the actual net gain to the community. Mr. Bonningen suggested that irreversible changes would be made to the ecosystem and adjacent property owners would have to bear an additional burden.

Bob Phillips, teacher at Rowe Jr. High, said Kellogg Lake has been a learning facility for his classes, and this development would further deteriorate the natural resources. He stated he was speaking independently of the school district. Mr. Phillips said the Clackamas Town Center and the Omark development have already been detrimental to the system, and this project would destroy the last wetland in the chain. He said Milwaukie was livable because of its diversity, and the proposed apartment complex would stress, not enhance, the area. Mr. Phillips added the values being taught in schools are not supported by the community in building activities such as this.

Ralph Klein, 10795 SE Riverway, said the Council must look to the future and find a project that would improve traffic. He said the traffic access to the site is potentially life threatening, and the City must seek the aid of ODOT to solve traffic problems.

Guy Foster, 2311 SE Lark, told Council the curve on McLoughlin restricts vision. He said the convergence of River Road causes traffic and poor vision at 26th.

Dennis Miller, 2600 SE Lakewood, said he was not opposed to the development but was concerned with the safety of residents. He expressed the concern that there was more interest in money than in public safety in this development.

Applicant's Rebuttal.

Ed Sullivan, Attorney for the Applicant, announced presentations would be made by Tom Hamman, Charles Lane, Herb Schlicker, Wayne Kittleson, and Dorothy Anderson addressing questions and concerns raised at the previous Council meeting. Sullivan submitted copies obtained from the County microfiche files regarding the 1978 decision on this site.

Tom Hamman, OTAK, stated the site is buildable, and no significant alterations would be involved although additional soil studies will be required and anticipated. He stated that Clackamas County Sewer District #1 maps indicate bedrock on the site. Regarding project design, Mr. Hamman stated OTAK is a civil engineering firm and has attended to and presented an engineering profile of grades and slopes. He also stated if the floodway were included, 71% of the property would be left as open space with 9% buildings and 20% paved. Comparatively, if the lake and wetland were deleted from the estimate, 14% would be buildings, 53% open space, and 33% paved. Mr. Hamman stated the proposal was consistent with the concerns for a trail to North Clackamas Park because an easement was allowed. To accommodate concerns of environmental impact, further design work had been done by the applicant. Mr. Hamman stated the site plan in relation to the wetland was adjusted to come no closer than 3-5 feet of the wetland boundary. He stated that above the wetland line, a French drain would be built to attend to the issue of erosion and water flow through the wetland area. **Councilmember Fitzgerald** asked how water would be filtered. Hamman replied that uphill, sediment would be filtered by a fence, and the applicant planned for an erosion control fence of wire and fabric. This fence would keep construction material and other sediment out of the wetland. Mr. Hamman stated the sewer line would have to be accessed from the wetland, but the surface would be restored. A buffer of such plants as hawthorne and multiflora roses would be planted to provide wildlife habitat. As plant material grows, it will naturally take over erosion control, and the fence would be removed. Mr. Hamman stated that certain damaged or diseased trees would have to be removed to protect people and property. He told Council these revised plans solved hydrology problems and plantings provided habitat and buffer.

Mayor Hall asked who owned the upland area. Hamman replied some of it was on the project itself, and the rest of it was owned by the State Highway Department. Mayor Hall questioned private planning in a public area. Hamman said that highway landscaping is usually done by the department and the habitat buffer may be out of control of the developer.

Mr. Sullivan pointed out this was on the Willamette Greenway and within ODOT's jurisdiction. He stated the plan showed sensitivity to natural habitat. Responding to Mr. Jaeger's comments, according to the wetlands definition of the Corps of Engineers, the buildings are no longer in the wetland. He said the site is long and narrow, and the developer is sensitive to the need of vegetation replacement on cut embankments. Mr. Sullivan said the claim that the apartments would be an eyesore was subjective. He stated the projected noise levels were within the limitations.

Councilmember Fitzgerald asked about the steep embankment to the south, and **Mayor Hall** asked if there would be retaining walls. Hamman replied although there was no final design, there would be a combination of retaining walls, and an erosion plan would be submitted to the City.

Charles Lane, Northwest Testing Labs, told Council he had 20 year's experience on civil engineering projects. **Councilmember Fitzgerald** asked about the opponent's claim that this was a landslide area. Lane said he disagreed. He did not think there was activity beyond surface slides. **Councilmember Sandusky** asked about the dating of the soils to the Pleistocene Age, and Lane said he would refer that question to the geologist, Mr. Schlicker.

Berbert Schlicker, H.G. Schlicker & Associates, 7 SE 9th, Portland, 97216, discussed the geology of the site as requested by Charles Lane of Northwest Testing Labs. He told Council Kellogg Creek is an eroded channel probably formed during Pleistocene glacial floods similar to Lake Oswego. There are layers of basalt, gravel, silty sand, topped by approximately 1 foot of organic matter. He submitted a map from his publication **Engineering Geology of North Clackamas County**. He stated slopes and terraces have been modified by erosion, and only small slide potential existed near the highway. Mr. Schlicker stated the way in which trees were tipped did not indicate slope movement. He said basalt has not been disturbed because it was part of the lava flow. Basalt is exposed in the lake and appears less than 6" under the surface of the wetlands. He said the sag pond is actually a plunge pool created from falling water, not by a landslide. Mr. Schlicker said he did not believe the topography is hummocky, but a result of erosion. The makeup of the ground is permeable, and water is sifted into the lake. The area of the cabin, which was built in 1902, shows no distress of movement, and any mud flow would be shallow. No breaks or cracks were observed in the foundation. Mr. Schlicker stated there should be no foundation problem affecting the position of the buildings or the site plan.

Mayor Hall asked about soil movement near McLoughlin Blvd. Mr. Schlicker replied if it did exist, it was probably superficial and controllable. **Councilmember Richmond** asked if the recommendation for further study of the soils would be considered by the developer, and Sullivan replied affirmatively.

Wayne Kittleson Kittleson & Associates, 512 SW Broadway, Portland, 97205, presented a report responding to comments from the previous meeting. Mr. Kittleson said the County records contained no specific reference to traffic

studies done regarding the 1978 proposed development with which Mr. Shoemaker had expressed concern. He stated his belief the 1987 traffic study adequately addressed concerns expressed during the 1978 application. Mr. Kittleson cited the memorandum from Milwaukie Police Chief Goodpaster stating concern with jurisdictional confusion, but no substantial concern with a negative impact on traffic safety. Mr. Kittleson then addressed the discrepancy in figures for daily traffic volumes which opponents to the project had challenged. He said at the time background data were being collected for his analysis, the source was "Traffic Volume Tables for 1985." These tables indicated 26,500 vehicles per day. Since that time, the Oregon Highway Department has issued a new publication "Traffic Volume Tables for 1986" showing the average daily traffic volume as 31,800. He stated these differences in average daily traffic volume estimates had no effect on the traffic impact analysis results or conclusions of the report. Mr. Kittleson said ODOT engineers had indicated that traffic volumes on this portion of 99E have remained historically stable. He then noted METRO forecasted only an approximate 30% increase in volume over the next 20 years. Mr. Kittleson addressed the concern the traffic study did not adequately reflect accident characteristics on either side of the site access. He said even after additional segments of McLoughlin were considered, the average annual accident rate was below the statewide average for similar roadways. Mr. Kittleson said vision problems could be alleviated by positioning on the curve.

It was moved by Councilmember Lomnicki and seconded by Councilmember Fitzgerald to extend the meeting past 11:00 p.m. Motion passed 5 - 0.

Dorothy Anderson, White Co., Vancouver, Research Director, specializing in land use and waterfront development spoke concerning the French drain system. She said she had developed an Environmental Impact Statement for a similar development in Clark County, Washington. The erosion control plan had been under extreme scrutiny and was also reviewed by the EPA, Department of Fish and Wildlife, and Washington State Ecology Department. She said the plan used on this site could easily be adapted to Kellogg Lake. The sediment would be trapped upslope, and storm water would be fed into a French drain sediment free at a non-eroding velocity. She said the plan would maintain hydrological integrity because the water will drain slowly and evenly.

Stan Geiger, Wetland Ecologist with Scientific Resources, Inc. 12425 SW 57th Ave, Portland, 97219, told Council he was project manager on restoration projects of Blue Lake, Lake Oswego, Tualatin River, Lacamas Lake, and Crater Lake. He addressed the concerns of the reports presented by Fishman and Sharp at the previous meeting. Regarding the sensitivity of the lake, he said it was not a pristine lake, and any changes appear desirable enough to offset temporary disturbances. He felt improvement of the lake would make it more usable for residents. Mr. Geiger then stated the erosion control plan presented by OTAK would be effective, and the City would monitor compliance. He said the proposed site drainage system would enable the wetland to continue to function as a biofilter. Mr. Geiger told Council the wetlands would be enhanced by planting of more effective erosion control plants, and buffering on the upland side with plants will discourage people from intruding on the

wetland. He recommended caution in putting walking trails along the wetland for public access and suggested reducing additional public access. Mr. Geiger said the proposal is a management plan for vegetation, and removal of dominant species such as ivy would enhance the area for wildlife use. Regarding Mr. Fishman's concern with killing fish in Kellogg Lake, Mr. Geiger said the suggested French drain system would intercept herbicides and pesticides. He added the buffer area would offer food value and wood duck boxes could be installed, therefore providing better habitat and more food for wildlife.

Ed Sullivan responded to other questions in the opponent's testimony. He said access was the option of the property owners. Measures would be taken to protect the soils, and special reports were submitted with applications going beyond visual observation. The Schlicker report was more detailed, and a geological reconnaissance suggested in the report would be a later detail. Regarding the suggestion that a bank would never finance such a development, Mr. Sullivan said a bank has already made the business decision to support the proposal. Referring to Mr. Wright's report, Mr. Sullivan said it was not recommended to change the development, but that a detailed study could be supplied. He said Mr. Redfern's referral to flooding could be dealt with according to the report submitted by Mr. Schlicker, and landslides were not readily evident.

Mr. Sullivan said Fishman's concern with natural resources would be addressed in a separate process in the Environmental Protection Ordinance. He said the concern with the uncompleted natural resources inventory and updating of the Comp Plan were not appropriate at this time; development would require a wait of 2 - 3 years. Mr. Sullivan stated complete conservation was not consistent with the Comp Plan. The Comp Plan states that tree cutting should be reduced when possible, particularly next to a stream or spring, and although the inventory as presented by OTAK can be modified, selective cutting replacement must be allowed. He stated drainage of storm water relates to the Environmental Prevention Ordinance, and the developer has presented the concept of the French drain or other acceptable alternatives. The questions regarding the percentage of open space can be addressed by city staff. Mr. Sullivan said the developer would grant an easement for the trail, and the Council can decide if it is to be a recreational or preservation site. Mr. Sullivan urged Council not read the Comp Plan and Zoning Ordinance in isolation, but consider in conjunction with housing, economics, etc. and then interpret in a consistent manner. Mr. Sullivan stated the existing Goal 5 has always been the law, and the decision has already been made in the Comp Plan to allow construction.

He said this proposal goes beyond a hypothetical super ordinance as suggested by Mr. Fishman. If nothing happens to the lake, it will deteriorate. The period of construction could be a problem, but it can be mitigated. Mr. Sullivan said the developer has designed this as an adult-only complex with no dogs or cats allowed. He stated he felt the Greenway policy interpretation was consistent with past City interpretation. The developer has avoided areas in which the natural environment might be disturbed and areas which might be subject to state or federal scrutiny. Mr. Sullivan said his client would meet

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each stipulation of the ordinance, and the Environmental Ordinance provides appeal to Council. Regarding snag removal, he said it would be done if possible damage to life or property existed.

Addressing the questions of traffic, Mr. Sullivan said the only evidence that McLoughlin would be unable to handle additional traffic was anecdotal and non-professional. ODOT deals with the Willamette Greenway, therefore, with this site and the surrounding area.

Mr. Sullivan stated the density was within the bounds of the Comp Plan. A great deal of improvements require density adequate to cover the expenses. The statement by Nancy Thornton of the Oak Lodge Fire District Board at the previous meeting regarding the City's gobbling up Oak Lodge was not objective. He stated the petitions submitted to Council by Mr. Shoemaker carried no planning weight.

Mr. Sullivan addressed the development itself saying it would meet the Comp Plan, Zoning Ordinance, and Environmental Protection Ordinance. He said in advance of basic development issues as suggested in conceptual portion of the process, the developer would accept certain conditions. Mr. Sullivan stressed Goal 5 was in effect now, and this proposal falls under its guidelines, not those now in preparation. He stated the developer would accommodate concerns with soils and natural resources and would try to prevent any undesirable impacts during construction.

Opponent's Rebuttal.

Gene Lambird asked why the gate was no longer open at the head of the lake, and Mayor Hall replied the outflow had been too great and was carrying too much sediment from upstream.

Lynne Sharp asked the screen size of the fence, and Hamman said it would be a fabric screen of very close mesh. Ms. Sharp expressed concern with the buffer zone becoming a wildlife trap.

Paul Fishman suggested the decisions of the 1980 Goal 5 were not applicable now, particularly on site as valuable as this. He said the Greenway Element was established by the state to preserve the value of the Willamette, and urged Council's consideration of this goal. Mr. Fishman expressed his concern that if the wetland area were given away through this development, it could never be regained.

Mr. Wright, of Shannon & Wilson, said Mr. Schlicker's report was more complete because he was able to critique an existing report. He said the Schlicker report did not deny the existence of possible slide and soil movement.

Roger Redfern stated there was a conflict in the basic information because the initial report by Northwest Testing Labs did not mention any bedrock as was stated in the Schlicker report. This conflict of basic information would cause changes in the redevelopment plan, and further information must be

gathered. Mr. Redfern also questioned the effectiveness of the French drain system in very heavy rains. He suggested test pits be done before development progresses. He urged an independent review or denial of the application until the developer returns with a new plan.

Bob Shoemaker stated he was sure arrangements could have been made for the opposition to access the property. He urged that Council consider the fact that the work of the Natural Resources Task Force would be complete in several months, and that input could set valuable parameters for this site. Mr. Shoemaker said there was no density designation of this site in the Comp Plan, only on the adjacent area. He considered the density too high causing a change of the fundamental nature of the site and said it should be a park. He urged that Council, not staff, make the findings for this proposal. Regarding the anecdotal information cited by Mr. Sullivan, Mr. Shoemaker stated it was probably more reliable than that presented by Mr. Kittleson. He continued by suggesting the 1983-84 traffic volume figures were low because of the construction of I-205, and expressed the belief they would again increase. He asked Council also to consider that no member of the public had testified in favor of the project. Mr. Shoemaker said he feared that owner maintenance of the fences and drains probably would not continue.

Applicant's Final Rebuttal.

Ed Sullivan spoke to concerns expressed in the previous testimony. Regarding Ms. Sharp's concern with trapping animals behind the fence, Sullivan said it would be removed as soon as vegetation began taking over the erosion control functions. He stated that site has a residential designation. He said Mr. Fishman's concerns had been met by his client's taking extra steps. Reduction of density was not necessary because the standards had been met, and should therefore be approved. Mr. Sullivan stressed the Environmental Ordinance could be met outright or with imposition of conditions.

Mr. Schlicker said silts are unstable when wet and suggested additional drains to further lower the water table. He said more drilling will be done as the plan progresses.

Mr. Sullivan said they were discussing a recommended filter fabric tonight, but not absolutely necessarily the one to be used, and the French drain was at the end of the erosion control system.

Councilmember Fitzgerald asked the minimum height of the fence. **Ms. Anderson** said 2.5' used on the Clark County project was probably too high for a site of this size, but she would have to confirm the exact height with a staff engineer.

The public hearing was closed at 1:15 p.m.

It was the consensus of Council to continue the meeting to Wednesday, March 3, 4:30 p.m. in the City Hall Council Chambers to continue deliberations on the appeals.

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CONSENT AGENDA

It was moved by Councilmember Sandusky and seconded by Councilmember Lomnicki to adopt the Consent Agenda which consisted of City Council Minutes of February 16, 1988, and Liquor License application for Wichita Town Pub. Motion passed 5 - 0.

The meeting was adjourned at 1:20 a.m.

Dan Dullval